



Commonwealth of Massachusetts State Ethics Commission

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CONFLICT OF INTEREST OPINION EC-COI-92-19

FACTS:

You are a manager of a private communications corporation, DEF. DEF rents a corporate box at Fenway Park for Red Sox games. The cost of the box, which can seat 14 individuals, is \$700 per game. DEF spends an additional \$225 per game for food and refreshments for its guests. For federal taxation purposes, the Internal Revenue Service allows DEF to take a deduction of \$16 per seat, per game as a business expense.

Mr. X and Mr. Y are selectmen in a town (Town). The Board of Selectmen serve as the local licensing authority with regard to the cable television system. Pursuant thereto, the Selectmen issued a provisional license to Cablevision, Inc. to provide cable television services in the Town. The Selectmen have the ability to revoke or renew Cablevision's license and/or monitor its activities. For approximately six years, the members of the Board of Selectmen were, to some extent, involved in negotiations between Cablevision and DEF regarding a contractual arrangement for the addition of DEF broadcasts to Cablevision's services in the Town.

QUESTION:

May DEF offer and may Mr. X and Mr. Y or any other similarly situated public official accept seats in DEF's corporate box for Red Sox games?

ANSWER:

No.

DISCUSSION:

Section 3(a) of G.L. c. 268A prohibits anyone from directly or indirectly giving, offering or promising anything of substantial value to any present or former state, county or municipal employee or any member of the judiciary for or because of any official act performed or to be performed by such an employee.

Section 3(b) of G.L. c. 268A prohibits a public employee from soliciting or accepting anything of substantial value¹ for or because of any official act performed or to be performed.

In *Commission Advisory No. 8 (Free Passes)*, the Commission specifically stated that tickets to sporting events may be items of substantial value for purposes of §3. The giving of such tickets to a public employee by a party subject to that employee's official authority violates §3 when the tickets are given for or because of official acts performed or to be performed by the public employee. As the Commission stated in *In re Michael*, 1981 SEC 59, 68:

A public employee need not be impelled to wrongdoing as a result of receiving a gift or a gratuity of substantial value in order for a violation of Section 3 to occur. Rather, the gift may simply be an attempt to foster goodwill. All that is required to bring Section 3 into play is a nexus between the motivation for the gift and the employee's public duties. If this connection exists, the gift is prohibited. To allow otherwise would subject public employees to a host of temptations which would undermine the impartial performance of their duties, and permit multiple remuneration for doing what employees are already obligated to do — a good job.

Whenever a public employee is in a position to act on a matter affecting a party's interests, the Commission

has found that the private party's gift of something of substantial value to the public employee and the employee's receipt thereof violate §3, even if the public employee and the party have a private personal relationship and even if the public employee abstains from all official matters concerning the party, unless it can be demonstrated by the evidence that a private relationship was the actual motive for the gift. *In re Flaherty*, 1990 SEC 498; *Commission Advisory No. 8*.

Section 3 is therefore implicated, if DEF gives or if Mr. X and Mr. Y accept sporting event tickets from DEF. One issue to be decided then becomes whether such tickets are being provided to Mr. X and Mr. Y for or because of their official position. Where Mr. X and Mr. Y as selectmen continue to have regulatory authority over the cable television industry in the Town, it would be difficult for Mr. X and Mr. Y to demonstrate that a personal relationship with a DEF executive is the actual motivation for such a gift.^{2/} The Commission has previously held that where there is no prior social or business relationship between the giver and the recipient and where the recipient is a public official who is in a position to use their authority in a manner which could affect the giver, an inference can be drawn that the giver was seeking the goodwill of the official because of a perception by the giver that the public official's influence could benefit the giver. *Commission Advisory No. 8*. In this case the public officials did in fact use their authority in a way which affected DEF, as evidenced by the past involvement of the Selectmen, and Mr. X and Mr. Y individually, in negotiations between DEF and Cablevision regarding service in the Town. Moreover, we must assume that the Selectmen could presumably take action in the future which could affect the current relationship between Cablevision and DEF or which could otherwise affect DEF. We therefore find that the acceptance of sporting tickets (if of substantial value) by any Selectman would result in a §3 violation. Furthermore, DEF may not offer to any Selectman any sporting event tickets of substantial value. Similarly, with regard to any other public official, if a public official is in a position to act officially on a matter which affects the interests of DEF, §3 will be implicated. Only if no services or discretionary activity have been or are being performed, and if the public official is not in a position to use his or her authority in a manner which could affect DEF, then DEF may offer sporting event tickets of substantial value to a public official. *Commission Advisory No. 8*.

Another factor in determining whether §3 will be violated is whether the item being offered by DEF is of substantial value. In *Commission Advisory No. 8*, the Commission addressed the issue of valuing single admission tickets for sporting or entertainment events. The Commission held that for purposes of §3, the face value multiplied by the number of the tickets involved will be the value. If that value exceeds \$50.00, it will be considered of substantial value. Moreover, in certain cases, the Commission may be inclined to look beyond the printed face value of a ticket in determining whether or not a ticket is of substantial value.^{3/} Here, we are required to value tickets for seats in a corporate booth where there is no printed value on the tickets. Under these circumstances, we will use the actual cost of each corporate box seat in determining the value of the Red Sox tickets. Because DEF pays \$700 per game for the booth which holds 14 seats, per seat cost is \$50.00. Additionally DEF spends \$225 per game for food and refreshments, a portion of which may be added to the value of each ticket. We therefore find that the value of a seat in a corporate box for Red Sox games is of substantial value.

This position is consistent with the Commission's valuation standards for purposes of making a disclosure on the Statement of Financial Interest. In *FD-COI-80-1*, the Commission held that for purposes of disclosing the value of free or discounted entertainment passes, the Commission will look first to value which appears on the pass or ticket. If the pass or ticket has no face value, but can be purchased, the ticket will be valued at the price at which the ticket is sold (or purchased).^{4/}

Date Authorized: June 16, 1992

^{1/}Anything valued at \$50 or more is "of substantial value." *Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976).

^{2/}We note that although Mr. X and Mr. Y have previously claimed a personal relationship with a certain DEF executive, the relationship has been described by that DEF executive as a "professional acquaintance" suggesting a business rather than a personal relationship.

^{3/}For example, if a ticket is purchased through a special events ticketing agency, a service fee is often added to the face value of the ticket thereby increasing the cost of the ticket. Under such circumstances, the Commission need not restrict itself to the printed face value of the ticket in determining substantial value. The Commission does not suggest, however, that it will consider the purchase price of tickets obtained through potentially illegal means such as ticket scalping (*see e.g.* G.L. c. 140, §§ 185A - 185F).

^{4/}We reject any valuation based upon the reported amount which DEF may deduct as a business expense for federal tax purposes as that amount may not reflect the actual value of the ticket.